

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL ALAN FARQUHARSON,

Defendant-Appellant.

UNPUBLISHED

December 22, 2011

No. 289071

Gladwin Circuit Court

LC No. 08-003915-HH

ON REMAND

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

This case returns to this Court on remand from our Supreme Court for reconsideration in light of *People v Dowdy*, 489 Mich 373; 802 NW2d 239 (2011) (*Dowdy II*), which found that homelessness is not a bar to compliance with SORA. *People v Farquharson*, 490 Mich 891, 804 NW2d 317 (2011). After such consideration, we affirm defendant's conviction.

Defendant was convicted by a jury of failing to comply with his reporting requirements under SORA, MCL 28.729. Defendant appealed his conviction and, in our original opinion, we vacated defendant's conviction relying on *People v Dowdy*, 287 Mich App 278; 787 NW2d 131 (2010) (*Dowdy I*), rev'd 489 Mich 373 (2011). *People v Farquharson*, unpublished opinion per curiam of the Court of Appeals, issued July 22, 2010 (Docket No. 289071). We reasoned that because defendant was homeless at the time he was charged with failing to report under SORA, he was not subject to the reporting requirements as determined in *Dowdy I*. *Farquharson*, unpub op at 1. Specifically, we stated:

This Court recently determined that the SORA does not apply to persons who are homeless. *People v Dowdy*, [287 Mich App 278; 787 NW2d 131 (2010), rev'd 489 Mich 373 (2011)] []. This Court reasoned that the Legislature chose to focus the SORA reporting requirements on persons who have a domicile or residence, as defined by the Act. *Id.* [at 282]. Because there was no argument that the defendant had a domicile or residence, the defendant was not subject to the statute. *Id.* [at 281]. The Court urged the Legislature to consider a change to the SORA to bring a homeless sex offender within its reach, but recognized that any change was "solely within the province of the legislative branch." *Id.* [at 282],

citing *People v Garden*, 482Mich 41, 66; 753 NW2d 78 (2008). [Farquharson, unpub op at 1.]

Subsequently, plaintiff filed an application for leave to appeal; however, in the interim, our Supreme Court granted leave to appeal in *Dowdy* to determine whether homeless sex offenders are obligated to comply with the registration requirement imposed by SORA. By order of our Supreme Court, plaintiff's application was held in abeyance pending the outcome of that case. On July 11, 2011, our Supreme Court issued an opinion addressing whether homelessness is a bar to compliance with SORA. See *Dowdy*, 489 Mich at 373. Following our Supreme Court's decision in *Dowdy II*, this Court is now charged on remand to reconsider its decision in the instant case.

In *Dowdy II*, our Supreme Court addressed the issue whether being homeless relieved a sex offender of the registration requirements imposed by SORA. *Dowdy*, 489 Mich at 376. In *Dowdy II*, the defendant was required to register as a sex offender as a result of a 1984 criminal sexual conduct conviction. *Id.* at 376-377. Following his release from incarceration in 2002, the defendant registered his residence as the Volunteers of America (VOA), a homeless shelter in Lansing, Michigan. *Id.* at 377. Sometime in the fall of 2006, the defendant left the VOA and no longer received services from the homeless shelter. *Id.* In 2006, the police attempted to verify where the defendant was living. *Id.* The police discovered that the last time that the defendant reported his residence or domicile, for purposes of SORA, was in November 2002. In October 2006, the police visited the VOA and learned that the defendant no longer received services from the homeless shelter. *Id.* Subsequently, the defendant was charged with violating the reporting and notification requirements of SORA, and he argued that because he was homeless and did not have a residence or domicile address, he could not comply with the obligations imposed by SORA. *Id.* at 377-378.

The *Dowdy II* Court held that "homelessness is not a bar to compliance with SORA because homelessness does not preclude an offender from entering a police station and reporting to a law enforcement agency regarding the offender's residence or domicile." *Id.* at 376. The Court explained two statutory obligations imposed on sex offender which both requires a sex offender to inform law enforcement of his or her residence or domicile. *Id.* at 380. The *Dowdy II* Court then defined residence and domicile for purposes of SORA. *Id.* at 383-385.

Under SORA, a residence is "only that place where an offender *habitually* sleeps and establishes *regular* lodging." *Id.* at 383 (emphasis in original). The *Dowdy II* Court explained that a sex offender could identify "a vacant house or park as a 'residence' if it is, in fact, 'that place at which' the sex offender 'habitually sleeps, keeps his or her personal effects, and has a regular place of lodging.'" *Id.* at 384. The *Dowdy II* Court then defined domicile as "the place where a person has his home, with no present intention of removing, and to which he intends to return after going elsewhere for a longer or shorter time," and it stated that every person must have a domicile somewhere. *Id.* at 385. "Even if a homeless sex offender with transient sleeping arrangements cannot establish a 'residence' as SORA defines it, the offender is still capable of reporting sufficient information regarding where the offender lives for purposes of identifying a 'domicile.'" *Id.* The *Dowdy II* Court recognized that it may be difficult to verify where a homeless offender is domiciled; however, it stated that difficulties in verifying an offender's

information do not excuse the offender from complying with the reporting requirements under SORA. *Id.* at 386.

Recognizing the difficulty homeless offenders may face in identifying a residence or domicile, the Michigan State Police promulgated an order that allows homeless sex offenders to register their domicile as “123 Homeless.” See *Dowdy*, 489 Mich at 386.

Pursuant to SORA and the Michigan State Police order, the law enforcement agency can accept as “satisfactory proof” of the offender’s “domicile” the state, city, zip code, and county in which the offender lives and must add that information to the “123 Homeless” designation in the registry. Thus, when the homeless sex offender’s “domicile” is registered as “123 Homeless” in the city in which the offender lives, that is the offender’s statutory domicile for purposes of SORA. [*Id.* at 386.]

The *Dowdy II* Court concluded:

All sex offenders can, and therefore must, comply with the reporting obligations and notification requirements outlined in the statute. An offender’s homelessness in no way prevents that offender from physically entering a law enforcement agency and truthfully reporting to the authorities information regarding the offender’s residence or domicile. [*Id.* at 392-393.]

We now turn to the facts of the instant case. In 1990, defendant was convicted of first-degree criminal sexual conduct and required to register under SORA. According to law enforcement records, the last time that defendant reported his residence or domicile, as SORA requires, was in September 2007. In April 2008, the police received information that defendant was not living in the address reported, but instead living at his pastor’s home. The police visited the pastor’s home and made contact with defendant. Defendant informed the police that he was no longer living at the last reported address and had not been at that address for approximately six months. Defendant stated that he was now homeless and stays with whoever opens his or her home to him.

At trial, defendant testified that, shortly before his encounter with the police in April 2008, he was incarcerated in a facility in Mason, Michigan. He asserted that he was released on March, 18, 2008. According to defendant, upon his release, he stayed with a friend for approximately 10 days and then moved around. He asserted that he did not have a permanent address. Defendant testified that at times he stayed at the address registered in the police records and at other times he stayed with his pastor. The record also revealed that defendant used the address registered in the police records as his mailing address and that he stored some of his belongings at that address. At trial and on appeal, defendant argued that he is homeless and does not have a permanent residence or domicile to register for purposes of SORA.

In light of *Dowdy II*, we cannot find that defendant’s homelessness relieved him of the obligation to register his residence or domicile with law enforcement. On this record, it appears that defendant failed to comply with the reporting requirements under SORA. MCL 28.725 provides, in pertinent part, the following:

(1) An individual required to be registered under this act who is a resident of this state shall report in person and notify the registering authority having jurisdiction where his or her residence or domicile is located immediately after any of the following occur:

(a) The individual changes or vacates his or her residence or domicile.

In April 2008, the police attempted to verify defendant's registration information as found in their records. The police records indicated that the last time defendant reported his domicile or residence was in September 2007. The investigating officer encountered defendant at his pastor's home, and defendant told the officer that he no longer lived at the registered address. Defendant added that he has not lived at the registered address for approximately six months. Under SORA, defendant had to immediately report in person and notify a law enforcement agency that his registered residence or domicile was no longer accurate. According to the record, in those six months defendant failed to notify a law enforcement agency of the change. *Dowdy II* makes clear that the reporting requirement "applies regardless of the stability of where an offender resides or is domiciled." *Dowdy*, 489 Mich at 389. "Even if defendant had difficulty in identifying his new residence or domicile, he was nevertheless obligated to notify the authorities that his residence or domicile had changed. Nothing in the text of SORA suggests that homelessness is an excuse for an offender's failure to comply with the act." *Id.* at 390. Thus to satisfy his reporting requirement, defendant should have reported in person to a law enforcement agency and provided the authorities with truthful information about his residence or domicile, whether it was that he was living with his pastor or was homeless. The *Dowdy II* Court stated that "any difficulty verifying the truthful information provided by [a] defendant is the responsibility of law enforcement and does not negate [a] defendant's responsibility to appear to report in the first instance." *Id.* There is no evidence suggesting that defendant complied with his obligation to report in person following the change in his residence or domicile, and thus, defendant violated his mandatory obligation under SORA's reporting requirement.

Still, defendant argues that he has is homeless and has no permanent address to register as his residence or domicile. According to defendant's testimony, he was incarcerated and released in March 2008. Upon his release, he stayed in various homes. He stayed with a friend for 10 days, sometimes he stayed at the registered address and, at times, he stayed at his pastor's home. Nonetheless, defendant asserted that he was homeless and had no permanent residence or domicile. *Dowdy II* recognizes that homeless offenders with transient sleeping arrangements may have difficulty identifying a residence; however, all homeless sex offenders have a domicile and are permitted to register their domicile as "123 Homeless." *Dowdy*, 489 Mich at 386. The *Dowdy II* Court explained that a homeless sex offender can satisfy the statutory obligations by registering his or her domicile as "123 Homeless" and providing the state, city, zip code, and county in which the offender lives. *Id.* Here, despite defendant transient sleeping arrangements, defendant could have registered his domicile as "123 Homeless" in the city in which defendant lived, and satisfactorily complied with his obligations under SORA.

In sum, the record reveals that defendant made no effort to comply with his reporting or notification requirements under SORA, and the fact that defendant is homeless does not serve as a basis for reversing his conviction of failing to report under SORA. We conclude that defendant's homelessness is not a bar to his fulfilling the statutory requirements under SORA.

In defendant's original appeal, he raised several issues challenging the constitutionality of SORA. Defendant first contends that SORA is unconstitutional vague and overbroad. We disagree. "In order to pass constitutional muster, a penal statute must define the criminal offense 'with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.'" *People v Lino*, 447 Mich 567, 575; 527 NW2d 434 (1994), quoting *Kolender v Lawson*, 461 US 352, 357; 103 S Ct 1855; 75 L Ed 2d 903 (1983). A statute is constitutionally vague if it (1) fails to provide fair notice of what conduct is prohibited, (2) encourages arbitrary and discriminatory enforcement, or (3) is overbroad and infringes on First Amendment freedoms. *Lino*, 447 Mich at 575-576.

Defendant claims that SORA is constitutionally vague for each of the three reasons mentioned above, but he does not provide argument regarding the First Amendment. A party's mere assertion that the party's rights were violated, unaccompanied by record citations, cogent argument, or supporting authority, is insufficient to present this issue for consideration by this Court. MCR 7.212(C)(7); *People v Jones (On Rehearing)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993). Accordingly, we decline to engage in a First Amendment analysis.

Defendant next argues that SORA is vague because he did not have notice regarding how to comply with the statute in light of his homeless status. However, a statute that is unconstitutionally vague is one that fails to provide fair notice of what conduct is prohibited. See *People v Nichols*, 262 Mich App 408, 409-410; 686 NW2d 502 (2004). SORA requires individuals meeting certain criteria to register as a sex offender. MCL 28.723. Specifically, SORA provides, in pertinent part, that:

(1) . . . the following individuals who are domiciled or temporarily reside in this state or who work with or without compensation or are students in this state are required to be registered under this act:

(a) An individual who is convicted of a listed offense after October 1, 1995.

(b) An individual convicted of a listed offense on or before October 1, 1995 if on October 1, 1995 he or she is on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, or under the jurisdiction of the juvenile division of the probate court or the department of human services for that offense or is placed on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, placed under the jurisdiction of the juvenile division of the probate court or family division of circuit court, or committed to the department of human services after October 1, 1995 for that offense. [MCL 28.723(1)(a) and (1)(b).]

SORA requires a registered individual to "notify the registering authority having jurisdiction where his or her residence or domicile is located immediately after . . . [t]he individual changes or vacates his or her residence or domicile." MCL 28.725(1). SORA also requires a sex offender to report in person to a law enforcement agency to verify his or her residence or domicile. MCL 28.725a(3).

In this case, the language of the statute clearly outlines which individuals are required to report as sex offenders, and defendant meets the criteria because he was convicted of criminal

sexual conduct (CSC) in 1990 and was sentenced to prison for a term of fourteen years. See MCL 28.723(1)(b). Furthermore, defendant testified at trial that he received a form upon being released from prison containing his obligations and duties under SORA. Defendant also acknowledged he knew that an individual required to register as a sex offender under SORA is also mandated to notify law enforcement of his or her residence or domicile. From defendant's own testimony, it appears that he was aware of the requirements under SORA. That he did not believe that he should be subject to the requirement under SORA does not equate to a failure of SORA to provide fair notice of what conduct is prohibited. SORA provides sufficient notice of what conduct is prohibited, and thus, defendant's vagueness challenge fails.

Defendant next argues that SORA violated his due process rights. This Court has previously considered due process challenges to SORA and concluded that the reporting requirements do not violate a defendant's due process rights. In *In re Wentworth*, 251 Mich App 560, 564-565; 651 NW2d 773 (2002), this Court adopted the reasoning of the United States District Court in *Lanni v Engler*, 994 F Supp 849, 855 (ED Mich, 1998), which ruled that due process rights were not offended by SORA. This Court stated that any deprivation a defendant suffers because of SORA was not a result of the Act, but rather from the misconduct that resulted in the original conviction. *In re Wentworth*, 251 Mich App at 565. Accordingly, defendant's due process violation argument fails.

Affirmed.

/s/ Karen Fort Hood
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens